

AMENDED IN SENATE FEBRUARY 23, 2010

**SENATE BILL**

**No. 881**

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**Introduced by Senator Harman**

January 13, 2010

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~~An act to add Section 437.5 to the Code of Civil Procedure, relating to civil actions.~~ *An act to add Section 844.7 to the Government Code, relating to government liability.*

LEGISLATIVE COUNSEL'S DIGEST

SB 881, as amended, Harman. ~~Motion to strike:~~ *Government tort claims: incarcerated plaintiffs.*

*Existing law provides for the liability and immunity of a public entity or public employee for acts or omissions that cause injury to persons. Under existing law, a public entity is not liable for an injury proximately caused by any prisoner or an injury to any prisoner. "Prisoner" is defined for these purposes to include an inmate of the state prison, a county jail, or a penal or correctional facility. Existing law further provides that neither a public entity nor a public employee is liable for failure to provide a prison, jail, or penal or correctional facility or, if the facility is provided, for failure to provide sufficient equipment, personnel, or facilities therein.*

*This bill would exempt from liability a public entity and its officers, employees, and agents acting within the course and scope of their employment or duties for a claim for injury arising out of an act or omission within the course and scope of employment, if the claimant, at the time the claim arises, is an inmate, ward, or prisoner at the state prison, a county jail, or any detention center, juvenile correctional center, adult or juvenile conservation camp, or other similar institution,*

*or a parolee, regardless of when the claim is filed, unless the officer, employee, or agent acted with wanton and willful misconduct.*

~~Existing law authorizes a court to strike out all or part of a pleading not drawn or filed in conformity with state laws, a court rule, or a court order.~~

~~Existing law also provides that a publication or broadcast made in the proper discharge of an official duty or in any legislative, judicial, or other specified proceeding is privileged.~~

~~This bill would authorize a defendant in a civil action to file a special motion to strike all or any part of the complaint based on any privileged statement, testimony, or evidence made or offered at a parole hearing, if the complaint, or any portion thereof, filed against that defendant is filed by a plaintiff who is not represented by counsel and is incarcerated, as specified.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     *SECTION 1. Section 844.7 is added to the Government Code,*  
2     *to read:*

3     *844.7. A public entity and its officers, employees, and agents*  
4     *acting within the course and scope of their employment or duties*  
5     *shall not be liable for a claim for injury arising out of an act or*  
6     *omission within the course and scope of employment, if the*  
7     *claimant, at the time the claim arises, is an inmate, ward, or*  
8     *prisoner at the state prison, a county jail, or any detention center,*  
9     *juvenile correctional center, adult or juvenile conservation camp,*  
10    *or other similar institution, or a parolee, regardless of when the*  
11    *claim is filed, unless the officer, employee, or agent acted with*  
12    *wanton and willful misconduct.*

13    ~~SECTION 1. Section 437.5 is added to the Code of Civil~~  
14    ~~Procedure, immediately following Section 437, to read:~~

15    ~~437.5. (a) In any civil action in which the complaint, or any~~  
16    ~~portion thereof, is based on any statement, testimony, or evidence~~  
17    ~~that is made or offered at a parole hearing and is privileged under~~  
18    ~~Section 47 of the Civil Code, and filed by a plaintiff who (1) is~~  
19    ~~not represented by legal counsel and (2) is incarcerated in any~~  
20    ~~penal, correctional, or jail facility, the defendant against whom an~~  
21    ~~allegation in violation of Section 47 of the Civil Code is made in~~

1 the complaint, may, within the time allowed to respond to a  
2 complaint and, in lieu of filing of an answer to the complaint, or  
3 any other responsive pleadings, serve and file a notice of special  
4 motion to strike all or any part of the complaint based on a privilege  
5 under Section 47 of the Civil Code. The special motion shall  
6 include all of the following allegations:

7 (1) The complaint is based on a statement, testimony, or  
8 evidence that is privileged pursuant to Section 47 of the Civil Code.

9 (2) The plaintiff is not represented by legal counsel.

10 (3) The plaintiff is incarcerated in a penal, correctional, or jail  
11 facility.

12 (b) The special motion shall be entitled “Special Motion To  
13 Strike Based On Privilege Under Section 47 of the Civil Code.”  
14 No memorandum of points and authorities is required in support  
15 of this special motion. No filing or appearance fee is required of  
16 any defendant who files this special motion.

17 If a party serves and files a notice of special motion to strike the  
18 complaint, or a portion thereof, the time to answer the complaint  
19 is extended and no default may be entered against that defendant,  
20 except as provided in Sections 585 and 586.

21 (c) The notice of a special motion to strike the complaint, or a  
22 portion thereof, shall specify a hearing date set in accordance with  
23 Section 1005.

24 (d) The defendant is entitled, but is not required, to appear at  
25 the hearing on the motion to strike. In making its determination,  
26 the court shall consider the pleadings and supporting and opposing  
27 affidavits stating the facts upon which the liability is based. After  
28 the hearing on the special motion to strike, the court shall issue an  
29 appropriate ruling. If the court determines that allegations contained  
30 in the complaint are based on matters that are privileged under  
31 Section 47 of the Civil Code, the court shall strike those portions  
32 of the complaint that are based on the privilege provided under  
33 Section 47 of the Civil Code. If the court strikes the complaint in  
34 its entirety, the court shall dismiss the entire action with prejudice.

35 (e) All discovery proceedings in the action shall be stayed upon  
36 the filing of the special motion made pursuant to this section. The  
37 stay of discovery shall remain in effect until notice of entry of the  
38 order ruling on the motion. The court, on noticed motion and for  
39 good cause shown, may order that specified discovery be conducted  
40 notwithstanding this subdivision.

1     (f) ~~For purposes of this section, “complaint” includes~~  
2     ~~“cross-complaint” and “petition,” “plaintiff” includes~~  
3     ~~“cross-complainant” and “petitioner,” and “defendant” includes~~  
4     ~~“cross-defendant” and “respondent.”~~

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